

AMENDED IN SENATE MAY 24, 2010

AMENDED IN SENATE APRIL 5, 2010

SENATE BILL

No. 942

Introduced by Senator Dutton

February 3, 2010

An act to amend Section 11349.3 of, ~~to add Sections 11349.10 and 11349.11 to,~~ and to add Article 5.5 (commencing with Section 11348.5) to Chapter 3.5 of Part 1 of Division 3 of Title 2 of, the Government Code, relating to regulations.

LEGISLATIVE COUNSEL'S DIGEST

SB 942, as amended, Dutton. Regulations: review process.

Existing law, the Administrative Procedure Act, governs the procedure for the adoption, amendment, or repeal of regulations by state agencies, including a requirement that the notice of proposed action contain prescribed cost estimates associated with the proposed regulation. Existing law also provides for the review of these regulatory actions by the Office of Administrative Law.

This bill would establish an Economic Analysis Unit within the office. The bill would require agencies to make publicly available and submit to the unit specified cost estimates that pertain to a proposed regulation and specified information used to develop the cost estimates, as prescribed. The bill would require the unit to review final revised cost estimates for regulations that the agency determines to have a cost estimate of \$50,000,000 or more. The bill also authorizes a stakeholder to petition the director of the office to direct the unit to review a regulation that ~~does not meet the \$50,000,000 cost estimate threshold~~ *the stakeholder believes has an actual cost of \$50,000,000 or more*. The bill requires the unit to *develop an appropriate methodology for*

reviewing agency cost estimates for proposed regulations and to approve or reject the cost estimates of regulations that it reviews, as specified.

~~This bill would require each agency to review each regulation adopted prior to January 1, 1990, and to develop a report with prescribed information that shall be submitted to the Legislature on or before January 1, 2013. The bill would also require each agency, on or before January 1, 2018, and at least every 5 years thereafter, to conduct additional reviews of regulations that have been in effect for at least 20 years, as specified, and to submit an annual report to the Legislature that identifies the regulations reviewed during that year and the associated findings.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Article 5.5 (commencing with Section 11348.5)
2 is added to Chapter 3.5 of Part 1 of Division 3 of Title 2 of the
3 Government Code, to read:

4
5 Article 5.5. Cost Estimate Analysis of Proposed Regulations
6

7 11348.5. (a) There is hereby established within the office an
8 Economic Analysis Unit that shall review cost estimates of
9 proposed regulations, as provided for in this article.

10 (b) For purposes of this article, “unit” means the Economic
11 Analysis Unit.

12 11348.51. (a) (1) Each agency shall, at the time it disseminates
13 the notice of proposed action as required by Section 11346.4, also
14 disclose to the public any cost estimate required pursuant to Section
15 11346.5 and the nonproprietary information used to develop those
16 cost estimates.

17 (2) Each agency shall, at the time when it disseminates the notice
18 of proposed action as required by Section 11346.4, also submit to
19 the unit any cost estimate required pursuant to Section 11346.5
20 and all information used to develop those cost estimates, including
21 any proprietary information not disclosed to the public. The unit
22 shall treat as confidential any information identified as proprietary
23 by the submitting agency. The agency shall also submit to the unit

1 any information submitted to the agency from parties affected by
2 the proposed regulation.

3 (b) Each agency shall disclose to the public and submit to the
4 unit, in the same manner prescribed in subdivision (a), final revised
5 cost estimates for a proposed regulation 30 working days prior to
6 submitting the proposed regulation to the office for review pursuant
7 to Article 6 (commencing with Section 11349).

8 11348.52. (a) (1) The unit shall review final revised cost
9 estimates submitted pursuant to subdivision (b) of Section 11348.51
10 for a proposed regulation for which the agency has provided an
11 estimated cost of fifty million dollars (\$50,000,000) or more.

12 (2) The unit may review cost estimates submitted pursuant to
13 subdivision (a) of Section 11348.51 for a proposed regulation for
14 which the agency has provided an estimated cost of fifty million
15 dollars (\$50,000,000) or more. If the unit reviews cost estimates
16 for a proposed regulation pursuant to this paragraph, it shall
17 conduct the review and make determinations in the manner
18 provided pursuant to subdivision ~~(e)~~ (d).

19 (b) A stakeholder may petition the office to direct the unit to
20 review final revised cost estimates for a proposed regulation that
21 ~~has an estimated cost that is less than fifty million dollars~~
22 ~~(\$50,000,000) the stakeholder believes to have an actual cost of~~
23 ~~fifty million dollars (\$50,000,000) or more.~~ The director of the
24 office shall be authorized, in his or her sole discretion, to approve
25 or deny the petition.

26 (c) *The unit shall develop an appropriate methodology for*
27 *reviewing the cost estimates submitted by an agency.*

28 ~~(e)~~

29 (d) (1) The unit review of the cost estimates shall determine if
30 the submitting agency used an appropriate methodology to develop
31 those cost estimates and whether the submitted cost estimates are
32 a fair assessment of the estimated cost of the regulation based on
33 the information available to the agency to develop the cost estimate.

34 (2) The unit shall approve or reject a cost estimate within 50
35 working days. If the unit rejects the cost estimate, the proposed
36 regulation shall be returned to the agency with a written statement
37 of reasons for the rejection, which shall also be made available to
38 the public. If the unit approves the cost estimate, then the unit shall
39 notify the agency and the office that the proposed regulation is

1 eligible for final approval by the office pursuant to Article 6
2 (commencing with Section 11349).

3 11348.53. Subject to the requirements of subdivision (b) of
4 Section 11348.51, the office may concurrently review a proposed
5 regulation as required pursuant to Article 6 (commencing with
6 Section 11349), except that the office shall not approve a regulation
7 pursuant to Section 11349.3 that is being concurrently reviewed
8 by the unit until the ~~EAU~~ *unit* approves the cost estimates for that
9 regulation.

10 SEC. 2. Section 11349.3 of the Government Code is amended
11 to read:

12 11349.3. (a) Subject to Section 11348.53, the office shall either
13 approve a regulation submitted to it for review and transmit it to
14 the Secretary of State for filing or disapprove it within 30 working
15 days after the regulation has been submitted to the office for
16 review. If the office fails to act within 30 days, the regulation shall
17 be deemed to have been approved and the office shall transmit it
18 to the Secretary of State for filing.

19 (b) If the office disapproves a regulation, it shall return it to the
20 adopting agency within the 30-day period specified in subdivision
21 (a) accompanied by a notice specifying the reasons for disapproval.
22 Within seven calendar days of the issuance of the notice, the office
23 shall provide the adopting agency with a written decision detailing
24 the reasons for disapproval. No regulation shall be disapproved
25 except for failure to comply with the standards set forth in Section
26 11349.1 or for failure to comply with this chapter.

27 (c) If an agency determines, on its own initiative, that a
28 regulation submitted pursuant to subdivision (a) should be returned
29 by the office prior to completion of the office's review, it may
30 request the return of the regulation. All requests for the return of
31 a regulation shall be memorialized in writing by the submitting
32 agency no later than one week following the request. Any
33 regulation returned pursuant to this subdivision shall be resubmitted
34 to the office for review within the one-year period specified in
35 subdivision (b) of Section 11346.4 or shall comply with Article 5
36 (commencing with Section 11346) prior to resubmission.

37 (d) The office shall not initiate the return of a regulation pursuant
38 to subdivision (c) as an alternative to disapproval pursuant to
39 subdivision (b).

1 ~~SEC. 2. Section 11349.10 is added to the Government Code,~~
2 ~~to read:~~

3 ~~11349.10. (a) Each agency shall review each regulation~~
4 ~~adopted prior to January 1, 1990. The review shall be developed~~
5 ~~into a report that includes, but is not limited to, the following~~
6 ~~information for each regulation:~~

- 7 ~~(1) The date that the office approved the regulation.~~
8 ~~(2) The purpose.~~
9 ~~(3) The statutory authority.~~
10 ~~(4) The identification of impacted sectors.~~
11 ~~(5) The direct costs by sector.~~
12 ~~(6) Whether the regulation is duplicative of other regulations.~~
13 ~~(7) Whether the regulation is still relevant.~~
14 ~~(8) Whether the regulation needs to be updated in order to~~
15 ~~become more effective or less burdensome.~~

16 ~~(b) The agency shall consult with parties affected by the~~
17 ~~regulation in developing the report.~~

18 ~~(c) The agency shall submit the report to the Legislature on or~~
19 ~~before January 1, 2013.~~

20 ~~(d) To the extent that an agency is a component member of~~
21 ~~another agency, the member agency shall submit a copy of its~~
22 ~~report to the highest ranking agency head prior to submitting the~~
23 ~~report to the Legislature as required by this section. The agency~~
24 ~~head shall review the reports for each component agency for the~~
25 ~~purpose of identifying duplicative or conflicting regulations~~
26 ~~between departments.~~

27 ~~SEC. 3. Section 11349.11 is added to the Government Code,~~
28 ~~to read:~~

29 ~~11349.11. (a) On or before January 1, 2018, and at least every~~
30 ~~five years thereafter, each agency shall review each regulation that~~
31 ~~is at least 20 years old and has not been reviewed within the last~~
32 ~~10 years. The review shall be developed into a report that shall be~~
33 ~~submitted to the Legislature and includes, but is not limited to, the~~
34 ~~following information for each regulation:~~

- 35 ~~(1) The date that the office approved the regulation.~~
36 ~~(2) The purpose.~~
37 ~~(3) The statutory authority.~~
38 ~~(4) The identification of impacted sectors.~~
39 ~~(5) The direct costs by sector.~~
40 ~~(6) Whether the regulation is duplicative of other regulations.~~

- 1 ~~(7) Whether the regulation is still relevant.~~
- 2 ~~(8) Whether the regulation needs to be updated in order to~~
- 3 ~~become more effective or less burdensome.~~
- 4 ~~(b) Each agency shall submit an annual report to the Legislature~~
- 5 ~~that identifies the regulations reviewed during the previous year~~
- 6 ~~and the associated findings.~~